

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Danny Tarkanian

MUR 7353

Tarkanian for Congress and Robert Phillips

in his official capacity as treasurer

Victoria Seaman

Victoria Seaman for Congress and Robert Phillips, III

in his official capacity as treasurer

**I. INTRODUCTION**

The Complaint alleges that Danny Tarkanian and Tarkanian for Congress made an excessive and unreported in-kind contribution to Victoria Seaman and Victoria Seaman for Congress ("Seaman for Congress") in the form of "donor information" to help her fundraise, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). As set forth below, the Commission exercises its prosecutorial discretion and dismisses this matter.

**II. FACTUAL BACKGROUND**

Danny Tarkanian was a candidate for U.S. Senate in Nevada in 2018, and withdrew from that race on March 16, 2018, to run for Congress from the Third Congressional District of Nevada.<sup>1</sup> Tarkanian for Congress and Robert Phillips in his official capacity as treasurer is his principal campaign committee. Victoria Seaman was also a 2018 candidate in Nevada's Third District and Seaman for Congress and Robert Phillips III in his official capacity as treasurer is her principal campaign committee.<sup>2</sup> Seaman withdrew from that race on March 22, 2018.

<sup>1</sup> The Complaint refers to Tarkanian for Senate as the respondent. *See* Compl. at 1; Tarkanian for Senate Statement of Organization (Aug. 22, 2017). Tarkanian for Senate filed an amended Statement of Organization with the Commission on March 23, 2018 disclosing that it had changed its name to Tarkanian for Congress. *See* Tarkanian for Congress Amended Statement of Organization (Mar. 23, 2018).

<sup>2</sup> *See* Seaman for Congress Statement of Organization (Aug. 3, 2017).

1 The Complaint alleges that Tarkanian and Tarkanian for Congress provided “donor  
2 information” to Seaman and Seaman for Congress. It bases that allegation on a March 20, 2018  
3 Facebook post made by Tarkanian’s wife, Amy Tarkanian, who was reacting to criticism of  
4 Danny Tarkanian by a Seaman supporter. In the post, Amy Tarkanian wrote: “Do you actually  
5 think that after we gave Victoria all of our personal info we had saved for cd3 [Third  
6 Congressional District], donor information to help her fundraise and invite her to all of Dannys  
7 [sic] fundraisers as well as that THIS was our intention all along?”<sup>3</sup>

8 The Complaint alleges that “[p]ersonal data on a federal campaign for a congressional  
9 district can contain data on hundreds of thousands of individual voters,” and this data is  
10 “typically a closely held campaign asset” with “significant” commercial value.<sup>4</sup> The Complaint  
11 concludes that Tarkanian and Tarkanian for Congress thus made an in-kind contribution to  
12 Seaman and Seaman for Congress, and neither committee disclosed the contribution.<sup>5</sup> The  
13 Complaint also alleges that the in-kind contribution may have been an excessive contribution.<sup>6</sup>

14 In response to the Complaint, Tarkanian asserts that he provided Seaman with “less than  
15 100 names of people that may be interested in the Nevada CD 3 race in 2018,” not the “hundreds  
16 of thousands” of names and contact information that the Complaint alleges.<sup>7</sup> Seaman for  
17 Congress asserts that Amy Tarkanian exaggerated the extent of support that it received from

---

<sup>3</sup> Compl. at 1, Ex. B. It appears the dispute arose when Tarkanian withdrew from the Senate race and joined the Third District race and became one of Seaman’s opponents. The Complaint attaches a purported copy of the Facebook exchange. *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> Tarkanian Resp. at 1.

1 Tarkanian and his committee, and that the “personal info” was a small list of 80 friends that  
2 Tarkanian suggested Seaman contact for their support.<sup>8</sup> Seaman for Congress further asserts  
3 that, under the Commission’s regulations, “information shared between these parties would only  
4 be an in-kind contribution if it is deemed a mailing list.”<sup>9</sup>

### 5 III. LEGAL ANALYSIS

6  
7 The Act permits an authorized committee to contribute up to \$2,000 to the authorized  
8 committee of another candidate.<sup>10</sup> Candidates and political committees are prohibited from  
9 accepting contributions in excess of the Act’s contribution limits.<sup>11</sup> A “contribution” includes  
10 any gift, subscription, loan, advance or deposit of money or anything of value made by any  
11 person for the purpose of influencing any election for Federal office.<sup>12</sup> “Anything of value”  
12 includes in-kind contributions, such as the provision of goods or services without charge, or at a  
13 charge less than the usual and normal charge.<sup>13</sup>

14 The Act requires committee treasurers to file reports of receipts and disbursements in  
15 accordance with the provisions of 52 U.S.C. § 30104.<sup>14</sup> These reports must include, *inter alia*,

---

<sup>8</sup> Seaman for Congress Resp. at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> 52 U.S.C. § 30102(e)(3)(B); Explanation & Justification for Final Rules on Increase in Limitation on Authorized Committees Supporting Other Authorized Candidates, 71 Fed. Reg. 54,899 (Sept. 20, 2006).

<sup>11</sup> 52 U.S.C. § 30116(f).

<sup>12</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>13</sup> 11 C.F.R. § 100.52(d)(1).

<sup>14</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

1 the total amount of receipts and disbursements, including the appropriate itemizations, where  
2 required.<sup>15</sup>

3 Both sets of Respondents, the alleged contributor and recipient, describe the material  
4 Tarkanian provided to Seaman as contact information regarding 80 to 100 people, and the  
5 available information does not indicate otherwise.

6 Seaman for Congress asserts that the contact information is not an in-kind contribution  
7 under 11 C.F.R. § 100.52 because the information is not a mailing list. While mailing lists are  
8 cited in the regulation as one example of goods and services that are considered in-kind  
9 contributions, the list is illustrative, not exhaustive. Thus, if the contact information provided to  
10 Seaman falls within 11 C.F.R. § 100.52, Tarkanian for Congress and Seaman for Congress  
11 should have reported the making and receipt of the in-kind contribution.<sup>16</sup>

12 However, even if providing contact information for 80 to 100 people would constitute a  
13 contribution under 11 C.F.R. § 100.52, the value of the contact information appears to be *de*  
14 *minimis*.<sup>17</sup> Accordingly, the Commission exercises its prosecutorial discretion and dismisses the  
15 allegations of making and accepting excessive contributions and failing to report in-kind  
16 contributions.<sup>18</sup>

---

<sup>15</sup> 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

<sup>16</sup> See 11 C.F.R. § 104.3(a)(4)(ii), 104.3(b)(4)(vi).

<sup>17</sup> For example, one company that sells direct mail lists charges \$110 per thousand names for a donor file containing over twelve thousand names of Activists and Donors for Liberal Causes, and it charges \$90 per thousand names for a donor file containing two hundred and ten thousand names of Ohio Political Donors. See <https://politicalresources.com/mailing-list/direct-mail-email-lists>.

<sup>18</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).